STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner **No. 89098-001**

v

Blue Care Network of Michigan
Respondent
_____/

Issued and entered
This 27th day of May 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On April 10, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. On April 17, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The issue in this matter can be resolved by analyzing the Blue Care Network (BCN) BCN10 certificate of coverage and its applicable riders, the contract that defines the Petitioner's health coverage. It is not necessary to obtain a medical opinion from an independent review organization. The Commissioner reviews contractual issues under MCL 500.1911(7).

II
FACTUAL BACKGROUND

On August 15, 2007, the Petitioner fainted at the office of his primary care physician (PCP) following the administration of the anesthetic lidocaine for outpatient surgery to remove a wart. He was transported by ambulance to a nearby hospital emergency room (ER). BCN

covered the ER care and ambulance service, but applied a $75.00 ER copayment, a $500.00 deductible, and a 20% coinsurance to its approved amount before making its payment, leaving the Petitioner responsible for $595.92 in out-of-pocket costs.

The Petitioner appealed BCN's processing of the claims. After the Petitioner exhausted the internal grievance process, BCN maintained its decision and issued a final adverse determination letter on March 14, 2008.

III
ISSUE

Did BCN properly determine benefits for the Petitioner's August 15, 2007, ambulance and ER services?

IV
ANALYSIS

Petitioner's Argument

The Petitioner says on August 15, 2007, his PCP was not available for surgery and so he was seen by another physician in the office. The Petitioner advised that physician that he had a history of fainting. The Petitioner does not believe that this comment was taken seriously, however, because once he was injected with lidocaine he did faint. The surgery was immediately cancelled and an ambulance was called because of what the physician apparently believed was seizure activity.

When the ambulance arrived the Petitioner told the EMT personnel that he felt fine and wanted to decline transport. However, the Petitioner says the physician insisted that he be taken by ambulance to an ER for further testing. Tests were performed at the ER but no seizure-like activity was found. His final diagnosis was a fainting episode – just as he says he warned the physician before the surgery.

The Petitioner believes it was the physician's failure to take his warning about fainting spells seriously that led to his fainting. He says that topical ointment could have been applied

before the lidocaine injection or additional measures should have been taken for someone with a history of fainting spells.

The Petitioner does not think he should be responsible for charges for services he says he did not really need. He would like BCN to waive the copayment, coinsurance, and deductible for the ER and ambulance services he received on August 15, 2007.

BCN's Argument

In its March 14, 2008, final adverse determination, BCN said the claims for the services were processed correctly under the terms of the certificate, which includes a $75.00 ER copayment, a deductible of $500.00, and then a coinsurance of 20% of remaining charges up to BCN's approved amount.

Commissioner's Review

The Commissioner finds that BCN correctly processed the claims under the terms of the certificate and its applicable riders. First, in the ***$75 Emergency Room Copay Rider***, it says:

> The Certificate is hereby amended to increase the copayment for treatment in a hospital emergency room to $75 or 50% of the cost of treatment, which ever is less. The emergency room copayment is waived, if you are admitted. All other provisions of the Certificate pertaining to emergency room care remain unchanged.

The Petitioner received care in the emergency room and therefore it is subject to the $75.00 copayment (which was less than 50% of the cost of treatment). No other provision in Section 1.05 of the certificate, "Emergency Care," allows an exception to the copayment required by the rider given the facts of the Petitioner's case.

Second, the ***$500/$1,000 BCN10 Deductible Rider*** explains:

> DEDUCTIBLE means the amount the Member must pay before Blue Care Network (BCN) will pay for Covered Services under the "Your Benefit" section of the Member certificate.
>
> * * *
>
> **DEDUCTIBLE AMOUNTS**
>
> - $**500** per member

- $**1,000** per family (when two or more members are covered under one contract)

Under the deductible rider, the Petitioner must pay the first $500.00 for covered services before BCN begins paying. According to the rider, the deductible applies to all covered services with a few exceptions. However, ambulance service is not one of the exceptions and is therefore subject to the deductible.

Third, the ***BCN10 – 20% Copayment Rider*** has these provisions:

> **DEFINITION**
>
> COPAYMENT means the amount you must pay directly to a provider of Covered Services for those services and supplies. You must pay this amount when you receive Covered Services. * * *
>
> **COPAYMENT REQUIRMENTS**
>
> - Section 1.01 of "your benefits" in the BCN-10 Certificate is hereby amended to replace the words "Hospital copayment" with "Copayment".
>
> - The Copayment is amended to **20%** of the approved amount.
>
> * * *
>
> - If you have a Copayment for a particular service as well as a Deductible, you will first be responsible for the payment of the Deductible. The Copayment will be based on the remaining balance of the BCN approved amount. BCN will be responsible for the BCN approved amount. BCN will be responsible to make payment to the provider only after both the Copayment and Deductible have been paid.
>
> **COVERED SERVICES**
>
> The 20% Copayment is applied to the following services:
>
> * * *
>
> - Ambulance Services (section 1.06)

The total charge for the ambulance was $604.60 (which was also BCN's approved amount for the service). According to the terms of the deductible and coinsurance riders, BCN applied the first $500.00 of that charge to the Petitioner's unmet annual deductible and then paid 80% of the balance (80% of $104.60 or $83.68).

The Commissioner understands why the Petitioner is unhappy. He did not believe that he needed either ambulance transportation or ER services on August 15, 2007. He was understandably upset when he incurred $595.92 in out-of-pocket costs for services he felt were not medically necessary. The Petitioner further contends that he received improper care from his PCP's office and wants that office to pay the costs he incurred if BCN does not waive the provisions of the certificate.

The Commissioner, however, is unable to order the remedy sought by Petitioner. Under the Patient's Right to Independent Review Act (PRIRA), the Commissioner's role is limited to determining whether BCN properly administered the benefits under the terms and conditions of the Petitioner's certificate and its riders and state law, and nothing in the certificate or state law requires BCN to waive its copayment, deductible, or coinsurance in this case. Further, whether or not a provider exercised appropriate medical judgment in a specific situation is not a question that can be answered in an external review under PRIRA and the Commissioner cannot hold the Petitioner's physician responsible for any of the charges associated with the incidents on August 15, 2007. Moreover, the Commissioner lacks the authority, which circuit courts possess, to order relief based on equitable doctrines.

The Commissioner finds that the services the Petitioner received on August 15, 2007, were covered under the terms of his certificate and that BCN processed the claims for those services correctly.

V
ORDER

The Commissioner upholds BCN's final adverse determination dated March 14, 2008.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the Circuit Court of Ingham County.

A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

Ken Ross
Commissioner